

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS

No. 07-122V

Filed: May 1, 2009

NOT TO BE PUBLISHED

LOUIS SAMPT

Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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Fact Ruling

Fact Ruling and Order¹

A limited fact hearing was conducted on April 17, 2009. This ruling was drafted immediately following the proceeding without benefit of the transcript. One significant fact issue presented was the actual receipt of the alleged flu vaccine. The second significant issue presented was, if a flu vaccine was received, when was the vaccine administered. Based upon the medical record of November 18, 1998, P Ex, 1 at 703, and the testimony of Steven and Susan Sampt, petitioner's adult children, the undersigned finds that petitioner did in fact receive the flu vaccine. Respondent had indicated in a filing dated December 20, 2007, that he did not contest the fact of receipt of the flu vaccination. Respondent stated that "respondent does not dispute that petitioner more likely than not received an influenza vaccination on or about November 18, 1998, as alleged in the petition."

The date of receipt of the vaccine presents the more difficult issue. The fact witnesses, who the undersigned found in all respects very credible in their testimony, were unable to assist on this issue. While there are records indicating that the vaccine was received in October of

¹The undersigned intends to post this decision on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction "of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). Otherwise, the entire decision will be available to the public. Id.

1998, see P Ex. 7 at 3, the undersigned finds that highly unlikely given the clear import of the November 18 record. That record reads as follows:

I have discussed about flu and pneumonia vaccines and the patient wants to get both of these.

P Ex. 1 at 703.

Based upon this record, and other records referencing the flu vaccine as the possible causative agent, see P Ex. 1 at 681, it is found that the vaccine was received sometime after November 11, 1998, but before the onset of symptoms in January of 1999.

The parties shall discuss this fact ruling with their experts. Thereafter, the parties shall discuss potential dates for an expert hearing in this matter. The parties shall file a joint status report suggesting the next logical step in the proceedings in this case and a proposed time frame for those proceedings **within (30) days, by no later than June 1, 2009**.

As part of the parties' discussions, the undersigned strongly encourages consideration of informally resolving this matter. The undersigned is aware of flu vaccine related neuropathies having been formally found by the special masters and compensated, and also cases which have been informally settled. In addition, based upon the fact witness testimony, this case could also present the issue of the vaccine causing a chronic pain syndrome. Such cases have also been compensated through settlement. See Bubar v. Sec'y of HHS, Case No. 03-2837V, 2008 WL 2275567, (Sp. Mstr. Fed. Cl. May 14, 2008). The fact witness testimony made clear that petitioner's pain issues are the most troublesome for petitioner and that they arose after the vaccination and have continued unabated since that time. This case presents legitimate issues from each perspective and thus attendant risks of litigation. In addition, given petitioner's age and the fact of being housed in hospice, every effort should be made to resolve this case as quickly as possible. The undersigned is prepared to assist the parties in any way they deem helpful.

Any questions regarding this Order shall be directed to my law clerk, Catherine Olin, at (202) 357-6343.

IT IS SO ORDERED.

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Chief Special Master